

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

AS.No. 335 of 1993 ()

OS.95/1989 of I ADDL.SUB COURT, KOZHIKODE

APPELLANT/PLAINTIFF

**KISHORE R.SHAH
S/O RAVILAL,
KALATHIKUNNU AMSOM AND DESOM
KOZHIKODE.**

**BY ADV. SRI.K.P.DANDAPANI
SMT.SUMATHY DANDAPANI**

RESPONDENT/DEFENDANT

**K.P.JAYARAJAN
S/O SIVARAMAN
NAGARAM AMSOM AND DESOM
KOZHIKODE**

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 18/07/2007 THE COURT
ON 18/07/2007 DELIVERED THE FOLLOWING:**

K.PADMANABHAN NAIR, J.

A.S. No. 335 of 1993

Dated this the 18th day of July 2007

JUDGMENT

The plaintiff in a suit for money is the appellant. The plaintiff filed a suit against the respondent for recovery of Rs. 60,000/- with future interest. It was averred that the respondent sold a 1984 model ambassador car bearing Regn No. KLL 4004 to the plaintiff for a consideration of 75,000/-. The R.C. book, permit and other documents were also handed over to the appellant. The appellant sold the car to one Sri.P.Balakrishnan for a sum of Rs. 80,000/- Subsequently the car was seized by the Manjeri Police alleging that it was a stolen vehicle. It was alleged that the R.C. book and other vehicular documents were forged. Appellant decided to pay a sum of Rs. 80,000/- to Sri.P.Balakrishnan and entered into an agreement to that effect. It is also contended that he returned the entire amount of Rs. 80,000/- which he received from Sri.P.Balakrishnan. A mediation took place between the appellant and the respondent and the respondent agreed to return Rs.75,000/- and paid an amount of Rs. 15,000/- It was alleged that the respondent had undertaken to pay the balance amount of Rs. 60,000/- But he did not pay the said amount. It was also averred that the car actually stood in the name of one Sri.U.K. Nanu and the respondent had also agreed that he had no objection in the appellant collecting the amount of Rs. 75,000/- from Sri U.K.Nanu. An agreement incorporating all these facts were signed by the respondent. According to the appellant

the respondent evaded the payment of balance amount of 60,000/- Hence the suit for that money.

2. The respondent contended that the suit was not maintainable and he was not liable to pay any amount. The agreement of sale of the vehicle was denied. It is also contended that the suit was barred by limitation. The averment that he sold the ambassador car to the appellant was denied. The execution of the agreement was also denied. It was contended that respondent never agreed to pay any amount to the appellant. It was contended that respondent was a broker engaged in the sale of cars. The appellant purchased a car from one Sri Manakkal Rajan. Subsequently the car was seized by the police and Sri.Manakkal Rajan was arrested. Since the respondent had acted as a broker, appellant forcibly collected an amount of 15,000/- from him and obtained his signature in blank stamp papers.

3. The trial court found that there was no concluded contract between the appellant and the respondent and respondent was not liable to pay any amount. The trial court dismissed the suit. Challenging that decree and judgment this appeal is filed.

4. According to the appellant he purchased an Ambassador car bearing Regn No.KLL 4004 from respondent for an amount of Rs.75,000/- There is no material to prove that such a transaction had taken place. It was his further case that he sold the vehicle to one Sri P.Balakrishnan and subsequently the vehicle was seized by the police and he repaid the amount of sale consideration received from Sri.P.Balakrishnan. The

appellant relies on Ext.A1 agreement to that effect. His further case was that the car actually belonged to Sri.U.K.Nanu and there was a mediation in which Sri.U.K.Nanu had agreed to reimburse the amount which the appellant had lost. It was also contended that the respondent paid Rs.15,000/- to the appellant and agreed to pay the balance amount of Rs.60,000/-. The appellant had also contended that one Sri.U.K.Nanu was the Registered owner of the car and the registered owner had agreed to pay an amount of Rs. 75,000/- to the appellant. The respondent also agreed that he has no objection in Sri. U.K.Nanu paying the value of the car to the appellant. All these transactions are denied by the respondent. His specific case was that Ext. A4 agreement and Ext.A6 receipt relied on by the appellant were forged. His specific case was that the car actually belonged to one Sri. Manakkal Rajan and he acted only as a broker. Sri.Manakkal Rajan sold the car to the appellant which was subsequently seized by the police. The evidence regarding the execution of Ext.A1 agreement and the return of the amount was disbelieved by the court below. Ext.A1 agreement is alleged to have been executed on 23-8-1985. There is an endorsement in the agreement by Sri.P.Balakrishnan that he received entire amount from the appellant on 10-3-1986. The evidence of the plaintiff and PW2 Unni were contradictory. Much reliance was placed on Ext.A4. A perusal of Ext.A4 shows that the statements contained in that agreement are highly artificial. It is alleged to have been executed by Sri.P.Jayarajan. A reading of the statements in the agreement gives an impression that Sri.P.Jayarajan was treated as a

third party to the agreement. The trial court took note of that fact and held that it is a fabricated document for the purpose of creating evidence. Much reliance was placed on Ext.A6. . The trial court after appreciating the evidence came to the conclusion that, Ext.A6 was also a fabricated document. The trial court accepted the case of the respondent that he was a broker and he did not sell any vehicle. It is also very interesting to note that at the time of trial the appellant came forward with a case that Sri U.K.Nanu had given Rs. 60,000/- to the respondent in presence of appellant and mediators. There is nothing on record to show that the said Sri.U.K.Nanu was the registered owner of the car. On the otherhand PW3 Balakrishnan gave evidence to the effect that one Manakkal Rajan was the registered owner of the vehicle. After analysing the entire evidence the court below came to the conclusion that no reliance can be placed on the evidence adduced by the appellant. Those findings of facts are based on good evidence. I do not find any reason to interfere with those findings of fact. This appeal is only to be dismissed.

. In the result the appeal is dismissed. No costs.

K.PADMANABHAN NAIR, JUDGE

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